of appeals to which application may be made are in vacation, any district court of the United States, within any circuit or district, respectively, wherein the unfair labor practice in question occurred or wherein such person resides or transacts business, for the enforcement of such order and for appropriate temporary relief or restraining order, and shall file in the court the record in the proceedings, as provided in section 2112 of title 28, United States Code. Upon the filing of such petition, the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board. No objection that has not been urged before the Board, its member, agent, or agency, shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Board with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Board, its member, agent, or agency, the court may order such additional evidence to be taken before the Board, its member, agent, or agency, and to be made a part of the record. The Board may modify its findings as to the facts, or make new findings, by reason of additional evidence so taken and filed, and it shall file such modified or new findings, which findings with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive, and shall file its recommendations, if any, for the modification or setting aside of its original order. Upon the filing of the record with it the jurisdiction of the court shall be exclusive and its

judgment and decree shall be final, except that the same shall be subject to review by the appropriate United States court of appeals if application was made to the district court as hereinabove provided, and by the Supreme Court of the United States upon writ of certiorari or certification as provided in section 1254 of title 28.

STATEMENT.

Petitioner operates a plant and place of business at Indianapolis, Indiana where it is engaged in the business of manufacturing, sale and distribution of automotive parts, mainly pistons. (R. 4.) During the times relevant (April and May of 1963) Petitioner employed approximately 355 people in all of its operations, although in the past the employment level has fluctuated between 220 and 355. (R. 282.) These employees worked in eleven departments under the supervision of a general superintendent, Carl B. Enochs. (R. 273.) General Foreman Harold Carr is in charge of production and in relation to that, shipping and receiving. (R. 288-90.) At the relevant times Petitioner operated two departments at night, the automatic and aluminum piston departments. (R. 291.) A labor union began an organizational campaign among Petitioner's employees during the latter part of April 1963, which began with meetings with the employees and then active organizational activities at Petitioner's plant. (R. 66-67.) These activities took the form of distribution and wearing of union buttons, pencils, combs, pamphlets and shirt pocket protectors, as well as in some instances wearing bumper stickers on the backs of shirts worn by employees of Petitioner. (R. 69; R. 70-71; R. 81; R. 93; R. 214.) At one time some one hundred and fifty of Petitioner's employees wore some form of union insignia at work and the effect of this on Petitioner's operations amounted to a general decline in the "required attention to work." (R. 285.)

The Court below affirmed the findings of the National Labor Relations Board on its petition for enforcement of its decision and order which required Petitioner to post a notice to the effect it would cease and desist from certain conduct found to be violative of Section 8(a)(1) of the Labor Management Relations Act and reinstate and pay backpay to employees specifically named in the Board's order because of discriminatory changes in the employment status of these employes in violation of Section 8(a)(3) of the Labor Management Relations Act. (R. 2-60; Appendix A, pages 15 to 22.) All of this unlawful conduct was found to have occurred during the union organizational attempt referred to above. More specifically, the Court below found the Board was correct in finding Petitioner violated Section 8(a)(1) of the Labor-Management Relations Act by (1) enforcing an invalid no-distribution rule; (2) attempting to prevent solicitation for the labor union during non-work time; (3) threatening employees with loss of economic benefits, discharge and plant closure if the labor union were to be chosen as their collective bargaining representative and (4) threats of discrimination and plant closure were labor union activities to continue and especially wearing union buttons while at work. This conduct was directly related to seven of Petitioner's employees. In addition, the Court below found the Board correct in finding Petitioner violated Section 8(a)(3) of the Labor-Management Relations Act by laying off a group of six employees on May 15, 1963, another group of twenty-one employees on May 29 and 31, 1963 and by laying off, suspending and demoting three employees at other times. (R. 2-60; Appendix A, page 16.)

REASON FOR GRANTING THE WRIT.

An Important Federal Question Is Presented by the Proceedings Below as to the Conflict Between the Evidentiary Standards Applied by the National Labor Relations Board in Finding Violations of Section 8(a)(1) of the Labor-Management Relations Act and Section 8(a)(3) of the Labor-Management Relations Act as These Standards Affect the Scope of Judicial Review in the Federal Circuit Courts of Appeals Under Section 10 of the Labor-Management Relations Act.

It is Petitioner's position that its petition for a writ should be granted because of the importance of the federal question arising from the conflict of standards used by the National Labor Relations Board as to the evidence required to establish violations of the Labor-Management Relations Act and the standard of review established by Congress in Section 10 of the Labor-Management Relations Act. The results of this conflict are apparent in this case since the Court below found as follows: (1) "We hold substantial evidence on the whole record supports the Board's finding that" Petitioner violated "Section 8(a)(1)" of the Act; (2) "We hold also that substantial evidence on the whole supports the Board's finding that" Petitioner violated "Section 8(a)(3) of the Act" by making two layoffs and by laying off, demoting and discharging individual employees for union activities. (Appendix A, page 19.) Thus, the Court below applied a single standard to the findings of the Board that Petitioner violated these provisions of the statute, yet the Board based these findings not on this single standard as set forth in Section 10 of the Labor-Management Relations

Act, 29 U. S. C. 160(e), 61 Stat. 146 ("substantial evidence on the record considered as a whole") but on the Board's assumption that the Section 8(a) (1) violations could be established by one standard and the Section 8(a) (3) violations could be established by another standard. Although these assumptions are not express in this case, they are clearly implied by the Board in its Decision and Order. (R. 2-60.)

Rather recently this Court made the observation: "There is no place in the statutory scheme for one test of the substantiality of evidence in reinstatement cases and another test in other cases." *N. L. R. B.* v. *Walton Manufacturing Company,* 369 U. S. 404, 407. It is Petitioner's position that in finding Petitioner in violation of the Labor-Management Relations Act in the respects enumerated above the National Labor Relations Board did exactly this by assuming in its Decision and Order issued herein that its long-established practice of applying differing standards was an acceptable practice even in light of this Court's holding in the *Walton Manufacturing* case. Thus, the Board has often stated the standard of proof required in cases involving discriminatory changes in employee status under Section 8(a) (3) of the Act as proof by "a preponderance of the evidence." *Glen Raven Silk Mills, Inc.,* 101 NLRB 239, 240 (1952); *Paul M. O'Neill Int'l Detective Agency, Inc.,* 124 NLRB 167, 172 (1959); *Falstaff Brewing Corporation,* 128 NLRB 294, fn. 2, 295 (1960), while the standard of proof in cases involving interference, restraint or coercion under Section 8(a) (1) of the Act is "whether the employer engaged in conduct which, it may reasonably be said, tends to interfere with the free exercise of employee rights under the Act." *American Freightways Co., Inc.,* 124 NLRB 146, 147 (1959); *Susquehanna Broadcasting Co., Etc.,* 139 NLRB 1294,

1295 (1962); *Indiana Metal Products Corporation,* 100 NLRB 1040, 1041-43 (1952.)

The effect of these obviously differing standards must be viewed in light of the specific evidentiary requirements for proof of a discriminatory change in employee status. Thus, the preponderance of the evidence means the record must show the change in employee status actually took place, the employee took part in union activities, the employer knew of this activity and the change in status took place because of this activity. However, once the employer has shown a reasonable cause for these changes, the record must show, to establish an unlawful change in status, that the cause shown by the employer is not the true cause. *Sahm, "The Discharge for Union Activities,"* 1961 Labor L. J. 324, 327-28 and cases cited. These tests indicate that the motive behind the change in employee status must be discriminatory, i. e., for anti-union reasons. The existence, however, of anti-union motive can be shown not by a "preponderance of the evidence", but rather by a test of whether an employer's conduct "reasonably tends" to interfere with the "free exercise" of employee rights under the statute. Thus, although Petitioner accepts the principle that in the usual case intent need not be proved specifically, *Radio Officer's Union* v. *N. L. R. B.,* 347 U. S. 17, 45 it does not accept the proposition that the motive or intent required can be proven by an evidentiary standard with no meaning—"a reasonable tendency to interfere," in all Section 8(a) (3) cases, *N. L. R. B.* v. *Brown,* 85 S. Ct. 980, 986, or that a different standard can be applied to conduct falling within the same section of the Act.

The Court below in following the Board's varying standards made error in finding conformity with the substantial evidence test, since the Board's findings were not based on this test, but rather on the varying standards set

forth above. Thus, the Decision and Order issued by the Board uses in all instances of 8(a)(3) violations the conclusions that the "motivation" was discriminatory, regardless of Petitioner's reasons for the change in employee status. (R. 25; R. 28; R. 34; R. 35; R. 36; R. 38; R. 43.) This was done on the basis of findings of motive based on a "reasonable tendency" test under Section 8(a)(1) and not under a "preponderance of the evidence" test under Section 8(a)(3). In other words, the Board did not use a single standard, but a dual standard and by using this standard it was able to "boot-strap" itself as to proof of Petitioner's violations of the statute. The use of this dual standard in this manner vitiates the following directive: "But where, as here, the tendency to discourage union membership is comparatively slight, and the employer's conduct is reasonably adopted to achieve legitimate business ends or to deal with business exigencies we enter into an area where the improper motivation of the employer must be established by independent evidence." *N. L. R. B.* v. *Brown,* 85 S. Ct. 980, 986. The record shows that valid business reasons were clearly shown for two changes in employee status found to be the result of unlawful motive on the part of Petitioner, absent independent evidence of motive.

The Board found Petitioner discharged James E. Plymate because "the moving cause was the union activity of Plymate, and said discharge was discriminatorily motivated and a violation of Section 8(a)(3) and (1) of the Act." (R. 38.) The record shows that Plymate began work for Petitioner on December 13, 1962 and was discharged on May 17, 1963. (R. 267.) About a "week and a half or two weeks" before his discharge Plymate was interviewed by Petitioner concerning his involvement in a "burglary that had happened at the Ertel Manufacturing Warehouse." (R. 268-70.) Plymate's union activity involved wearing

union buttons and execution of a union card. Although at the time of his interview with Petitioner concerning the burglary he was not wearing any union insignia because "I left—I had one of those pocket protectors and I had the badges on it and I had left it in the shirt so I wasn't wearing them that day," Plymate was wearing such badges at the time of his discharge. (R. 267; R. 271.) Petitioner's Plant Superintendent testified this employee was "under suspicion of robbery. He took a man to our warehouse while he robbed the warehouse . . . and the police asked us to keep him for a while before we let him go because they might want him." (R. 282-83.) Even though Plymate was never formally charged with a crime, this testimony is uncontradicted in the record. The Board's order requiring Petitioner to take this man back to work and pay him for all sums lost as a result of his discharge can only be based on the assumption that because elsewhere in the record there is some evidence Respondent was unlawfully opposed to labor unions, this man's discharge arose from an anti-union motive. This other conduct found to have a reasonable or natural tendency to interfere with employee rights in general was enough to overcome Petitioner's concern over the continued employment of one under suspicion of burglary, even though the discharge under the Board's apparently applicable standards should be tested by a preponderance of the evidence.

Similarly, the Board found Petitioner's "layoffs of May 29 and 31 were discriminatorily motivated, that the reasons advanced by the Respondent are in fact pretexts, and that said layoffs were violative of Section 8(a)(3) and (1) of the Act." (R. 34.) The layoff involved twenty-one employees of Petitioner working on the night shift in its aluminum piston department. Two other employees were demoted as a result of the discontinuance of the shift. Although the layoff involved twenty-one employees, the Board

issued a complaint involving only sixteen of them as far as any unlawful conduct on the part of Petitioner was concerned. (R. 140-41.) As to five of the remaining sixteen employees found to have been subjected to discrimination, there is no evidence in the record at all, since they neither testified nor was anything of substance said about them by other witnesses called by the Board. (R. 135; R. 163; R. 183.) Therefore, as to the entire group there is evidence concerning only eleven. The record also shows that of the eleven employees laid off on these dates about whom there is any evidence at all, seven worked less than four months for Petitioner, two less than a year, one a little over a year, and one approximately four years. (R. 78; R. 83; R. 92; R. 114; R. 115; R. 172; R. 188; R. 202; R. 215; R. 231; R. 235; R. 238; R. 244; R. 256.) Six of the eleven were ultimately put back to work. (R. 53-4.) Once again the motive here rests on certain verbal conduct by Petitioner's supervisors involving seven employees found to be unlawful under Section 8(a)(1) of the Act. (R. 16-23.)

The layoff was made because prior to the advent of any union activity (R. 65; R. 273) among its employees Petitioner had made arrangements to purchase another firm producing large-sized pistons. The purchase was desirable from Petitioner's point of view since production of large-sized pistons would place it in a less competitive field. Part of the purchase agreement required Petitioner to assume the contracts for over-size pistons already let by the seller. Petitioner had originally planned to transfer supervisory personnel from the seller's plant to Indianapolis, but of the three supervisors involved in the transfer only one actually came to Indianapolis and he left Petitioner's employ. This left Petitioner with a shortage of competent supervisors, yet an obligation to produce over-size pistons. As a result, Petitioner either had to lose the business it hoped to ac-

quire as a result of the purchase or transfer the needed supervision and thereby cause dislocation in one of its piston departments. The decision was made by Petitioner to live up to its obligation and try to retain its new business, and this necessitated purchasing aluminum pistons elsewhere. (R. 273-77.) This, then, is what the Board found to be unlawful because of the generalized unlawful intent it infused into the layoff by inference from other conduct found to be unlawful under a lesser evidentiary standard.

Although the "substantial evidence" test had been criticized by some commentators, *Cooper, "The 'Substantial Evidence' Rule," 44 A. B. A. J.* 945 (1958), it is clear that this is the single test on review of cases arising under the unfair labor practice provisions of the Labor-Management Relations Act. *N. L. R. B.* v. *Brown,* 85 S. Ct. 980; *N. L. R. B.* v. *Walton Manufacturing Company,* 369 U. S. 404; *Note, "Administrative Law: Labor Law: Substantial Evidence Test,"* 48 Cornell L. Q. 309 (1963). It is apparent that the Board in this and other cases while giving apparent effect to this statutory test (R. 44), has conveniently constructed evidentiary requirements which in effect negate the thrust of this test by applying differing standards of proof to violations of the same section of the Act. By use of this device the Board has been able to vitiate the application of the substantial evidence rule as enunciated in *Universal Camera Corp.* v. *N. L. R. B.,* 340 U. S. 474 and *N. L. R. B.* v. *Pittsburgh S. S. Co.,* 340 U. S. 498 by applying differing evidentiary standards where the law requires the application of a single standard.

CONCLUSION.

For these reasons Petitioner asks that this Court grant its petition for a writ of certiorari.

Respectfully submitted,

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APPENDIX A.

IN THE UNITED STATES COURT OF APPEALS
For the Seventh Circuit.

No. 15062 SEPTEMBER TERM AND SESSION 1965

NATIONAL LABOR RELATIONS BOARD,
Petitioner,
vs.
ERTEL MANUFACTURING CORPORATION,
Respondent.

On Petition for Enforcement of an Order of the National Labor Relations Board.

October 19, 1965.

Before HASTINGS, *Chief Judge*, DUFFY and CASTLE, *Circuit Judges.*

DUFFY, *Circuit Judge.* The Labor Board petitions for enforcement of its order issued against respondent and dated June 5, 1964.[1] Respondent (Company) maintains a factory and place of business in Indianapolis, Indiana, where it is engaged in the business of manufacturing and selling automotive parts.

The Union involved is the International Union, United Automobile, Aerospace & Agricultural Implement Workers of America, AFL-CIO, hereafter called the Union.

1. The Labor Board's decision and order are reported at 147 N.L.R.B. No. 39.

The Labor Board adopted the Trial Examiner's findings and decision holding the Company had violated Section 8(a)(1) of the Act by 1) enforcing an invalid no-distribution rule; 2) attempting to prevent solicitation upon behalf of the Union during non-work time; 3) threatening employees with the loss of benefits, discharge and plant closure if the Union were to obtain representation rights, and 4) threats of discrimination and plant closure if the wearing of Union buttons and other Union activities continued. The Board also found the Company had violated Section 8(a)(3)(1) of the Act by laying off a group of six employees on May 15, 1963, a group of twenty-one employees on May 29 and May 31, 1963, and by laying off, suspending and demoting individual employees on various other dates.

The Company had approximately 350 employees. They worked in eleven departments under the supervision of general superintendent Enochs. General foreman Carr was in charge of seven of these departments containing approximately 210 employees. The Company operated a day and night shift in the production and aluminum piston departments. In the latter department, twenty-one of the forty-seven employees were on the night shift.

When the Company hired a new employee, he was introduced to one of three men—Zigler, Longworth or Aurs. These men gave work assignments each day to the employees working on their shift. Each of the three also issued reprimands.

On the basis of these facts, the Board found, in accord with the Trial Examiner, that Zigler, Longworth and Aurs were supervisory employees as defined by Section 2 (11) of the Act. Whether an individual is a "supervisor" within the meaning of Section 2 (11) is a question of fact and, as such, will not be overturned on review if supported by substantial evidence. *Journeymen Plasterers' Protective*

Society, etc. v. *N. L. R. B.*, 7 Cir. 341 F. 2d 539. We feel the record contains substantial evidence to support the Board's finding on this question.

The officers of the Company were aware of the Union's organizing campaign. On April 30, 1963, the Union conducted an organizing meeting of the day shift employees and two days later, of the night shift men. At each meeting, employees signed authorization cards and were given a pin containing a legend "Join U A W Vote." Those who agreed to become members of the organizing committee were given a slightly larger pin containing the same legend with the additional words "Organizing committee." At these meetings and subsequent meetings held each week, authorization cards were distributed to the employees to obtain additional signatures. The Union instructed that such solicitations should be made during lunch periods and other non-work time. About half of the employees openly wore the respective buttons during working hours.

The Company had in effect certain shop rules. Rule 22 stated: "Soliciting or collecting contributions for any purpose whatsoever on Company time, without the specific approval of Management" and Rule 23 "Distributing literature, written or printed matter of any description on Company premises, without the specific approval of Management." At the end of the rules appeared—"The commission of any of the above infractions will be sufficient grounds for disciplinary action ranging from reprimand to immediate discharge, depending upon the seriousness of the offense in the judgment of the Management."

On May 3, 1963, superintendent Enochs called employee Sweet to his office and told him he was "subject to immediate dismissal" for passing out "illegal literature." Enochs read Rules 22 and 23 to him. Sweet replied the only thing he had ever distributed was union authorization cards.

Such activity had been limited to hours before work and during his lunch break. On May 16, the Company suspended Sweet for passing out "illegal literature" on its parking lot.

On May 15, 1963, Sweet and employee Cecil Russell were in the aluminum department about fifteen minutes before work time. Supervisor Zigler approached and told Russell "put those g-- d---- cards out of sight." Sweet advised Zigler that employees had the right to solicit for the Union on their own time. Zigler replied "It's not my rule. It's the Company's."

Employee Cloyd solicited authorization cards, mostly in the Company parking lot after he had finished work. He solicited occasionally on his own time in the factory. Superintendent Enochs asked Cloyd if he knew he was subject to immediate discharge and then read Rules 22 and 23 to him. Enochs told Cloyd if he were caught violating these rules, he would be dismissed.

After May 3, 1963, employee Greer wore his union button and his organizing committee button. Supervisor Aurs told him the Company would cut hours of work to offset any increase the Union might obtain. He asked Greer if he didn't enjoy his Christmas bonus and extra four hours a week. Aurs said "I see you're still wearing your badges. You must have plenty of money or don't want no job."

In the early part of May 1963, supervisor Longworth told employee Pemberton that if the Union got in, all employes would be able to fish all summer.

Employee Beck started to wear his union button about May 7. Supervisor Longworth told him if he continued to wear the button, he would probably be out of work before the month was up. He also said that if the Union got in, the Company would just close its doors.

On the morning of May 15, 1963, supervisor Zigler told

employees Sweet, Ramsey, Mobley, Holliday, Smith and Helton that they were all to go home and call back after 7 a.m. on May 17. It was plant superintendent Enochs who pointed out to Zigler which employees were to be sent home. All of these men except Ramsey were members of the union organizing committee. On their way out, they came through the section of the production department where employee Greer worked. Foreman Aurs, who had been heckling Greer about his union activities, told Greer —"there goes some more of your union buddies, going out, you see." The men reported back to work the following day.

The Company claims the men were sent home because the motor on one of the air compressors was not working properly. However, the Board found that the air compression on that date was approximately 95 to 100 pounds, whereas the normal operating pressure was between 80 and 100 pounds. Furthermore, employees Sweet, Smith and Mobley were working at the time on machines which did not require air pressure.

The Company discontinued the night shift in the aluminum piston department on May 29 at about 8:30 p.m. A total of twenty-one employees were laid off, partly from the night shift and partly from the day shift.

In addition, the Company demoted two setup men to operators. Among the twenty-one laid off, seventeen were members of the Union and thirteen were members of the organizing committee. The employees had not been warned about the pendency of the layoff. Zigler stated that "lack of work" was the reason.

On May 16, the Company sought quotations from another company for the production of alloy aluminum pistons. It requested bids in lots from 500 to 1000 on some items and up to 5,000 on others. The Company received

more than 10,000 pieces on June 3, an additional 17,333 pieces on June 20, and more than 15,000 pieces on July 10. The daily production of pistons manufactured by the Company on the day shift amounted to approximately 3,000 pieces.

The Labor Board concluded that the Company had violated Section 8 (a)(1) of the Act by the promulgation and implementation of its no distibution law, by extending its rule against solicitation on Company time to cover such activity on the employee's time, and by supervisors Aurs' and Longworth's threats of reprisals against supporters of the Union.

The Board further concluded that the Company violated Section 8 (a)(3) and (1) of the Act by 1) the layoff of six employees on May 15, 1963; 2) of twenty-one employees on May 29, and May 31, 1963; 3) the suspension of Sweet for one week and his demotion from setup man to operator on May 31; 4) the layoff of Beck from May 21 to May 27; 5) the discharge of Plymate on May 17, and 6) the demotion of Cloyd on June 24, 1963.

The Board's findings as to the reason for the layoffs and discharges are supported by substantial evidence in the record as a whole and we must accept them. *Universal Camera* v. *N. L. R. B.*, 340 U. S. 474; *N. L. R. B.* v. *Symons Mfg. Co.*, 7 Cir., 328 F. 2d 835, 837.

It is well established that an employer's rule which bars union solicitation by employees during non-working time or distribution of union literature during non-working time in non-working areas, in the absence of unusual circumstances, violates Section 8 (a)(1) of the Act. *Republic Aviation Corp.* v. *Labor Board,* 324 U. S. 793; *Time-O-Matic, Inc.* v. *N. L. R. B.*, 7 Cir., 264 F. 2d 96, 100. We hold there were no unusual circumstances in the instant case.

The Company argues that the fact that some of the

laid-off employees were subsequently reinstated, demonstrates that the layoffs were not motivated by the employees' union activities. However, the Board found the motive and purposes of the layoffs were "to scotch the lawful measures of the employees before they had progressed too far toward fruition." That is, before the Union obtained a majority in the plant. The fact is, the Union did not obtain a majority. Hence, the reinstatement of some of the layoffs at a later date does not disprove the illegal intent of the Company at the time of discharge.

The discharge of employee Plymate presents a close question. The Company's warehouse was burglarized by an ex-employee who had been discharged by the Company and who, earlier in the evening, had borrowed twenty-five cents from Plymate in order to purchase cigarettes. It was Plymate's testimony that the ex-employee told him that a man owed him $10 and, at his request, Plymate drove the ex-employee to a part of the city with which he was unfamiliar. In fact, he drove to a place near the warehouse, and a burglary was committed.

This story might seem improbable, but it is undisputed the Police Department closely questioned Plymate and he was not arrested nor detained in any manner. He was never charged with any crime with reference to the event. He explained the matter to superintendent Enochs and then went to work. However, ten days to two weeks later, he was discharged. We sustain the findings of the Board that Plymate was discharged because of his Union activities.

The Board ordered the Company to cease and desist from engaging in the unfair labor practices found to have been committed. The order requires the Company to offer reinstatement with back pay to ten piston department employees who were laid off, and also the same relief to

employee Plymate; further, to make whole the six employees who were laid off on May 16 for loss of pay suffered; to make whole eight employees for loss of pay suffered by other layoffs and demotions, and to post appropriate notices to this effect.

The Board dismissed the complaint insofar as it alleged violations of Section 8 (a)(1) of the Act by reason of certain actions of the Company's president and supervisors Longworth and Zigler. It also dismissed the complaint for alleged violations of Section 8 (a)(3) and (1) of the Act by the layoff of employee Lay and the discharge of employee Greer.

We hold substantial evidence on the whole record supports the Board's finding that the Company interfered with, restrained and coerced its employees in violation of Section 8 (a)(1).

We hold also that substantial evidence on the whole supports the Board's finding that the Company violated Section 8 (a)(3) of the Act by laying off two groups of employees for union membership and activity, and by laying off, demoting and discharging individual employees for the same reason.

As the Board's order is valid, a decree will be entered enforcing such order in full.

ORDER ENFORCED.